



Reprinted  
February 14, 2003

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## HOUSE BILL No. 1529

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DIGEST OF HB 1529 (Updated February 13, 2003 2:22 PM - DI 103)

**Citations Affected:** IC 8-1.

**Synopsis:** Utility mergers and IURC enforcement authority. Includes in the value of a utility's property for ratemaking purposes the value of certain qualified property. Allows an energy utility to recover through a retail rate adjustment mechanism certain government mandated costs incurred in providing retail energy service. Allows a public utility providing electric or gas service to implement rates proposed by the utility in a petition for a change in its basic rates if the utility regulatory commission (IURC) fails to issue an order on the petition within nine months. Requires the utility to refund to customers any difference between the rate implemented and the higher of the rates finally approved or previously in effect. Provides that certain transactions involving a utility company may not occur without IURC approval if the transaction will cause at least 50% of the company's voting stock to be held by different interests. Allows the IURC to impose a civil penalty of up to \$5,000 if a public utility providing specified services or a rural electric membership corporation (REMC) violates any utility law or fails to comply with certain IURC rules or orders. Allows the IURC to impose an additional penalty of up to \$10,000 if the violation or failure demonstrates a disregard by the public utility or REMC of its duty to remedy the violation or failure. Provides that public utilities subject to any environmental law may submit voluntary environmental compliance plans to the IURC. Repeals references to the federal Clean Air Act in the provisions concerning environmental compliance plans.

**Effective:** Upon passage; July 1, 2003.

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**Stilwell, Yount, Pelath, Stevenson,  
Lutz J**

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January 16, 2003, read first time and referred to Committee on Commerce and Economic Development.  
February 10, 2003, amended, reported — Do Pass.  
February 13, 2003, read second time, amended, ordered engrossed.

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HB 1529—LS 7256/DI 103+



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February 14, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1529

A BILL FOR AN ACT to amend the Indiana Code concerning  
utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 8-1-2-6.8, AS ADDED BY P.L.159-2002,  
2 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 6.8. (a) This section applies to a utility that  
4 begins construction of qualified ~~pollution control~~ property after March  
5 31, 2002.
- 6 (b) As used in this section, "clean coal technology" means a  
7 technology (including precombustion treatment of coal):
- 8 (1) that is used in a new or existing energy generating facility and  
9 directly or indirectly reduces airborne emissions of sulfur,  
10 mercury, or nitrogen oxides or other regulated air emissions  
11 associated with the combustion or use of coal; and  
12 (2) that either:
- 13 (A) was not in general commercial use at the same or greater  
14 scale in new or existing facilities in the United States at the  
15 time of enactment of the federal Clean Air Act Amendments  
16 of 1990 (P.L.101-549); or  
17 (B) has been selected by the United States Department of

HB 1529—LS 7256/DI 103+



Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(c) As used in this section, **"government mandated event" has the meaning set forth in section 6.9 of this chapter.**

(d) As used in this section, "qualified pollution control property" means: ~~an~~

(1) any:

(A) air, wastewater, solid waste, or thermal pollution treatment, storage, or disposal system or pollution control device ~~on~~ necessary to operate a coal burning energy generating facility; or ~~any~~

(B) equipment that constitutes clean coal technology; that has been approved for use by the commission and that meets applicable state or federal requirements; ~~(d)~~ or

(2) any air, wastewater, solid waste, or thermal pollution treatment, storage, or disposal system, pollution control device, or monitoring device that:

(A) is used for any plant, equipment, or facility used or to be used for the production, transmission, delivery, or furnishing of heat, light, or power;

(B) is approved for use by the commission; and

(C) meets applicable state or federal requirements;

on which construction began after March 31, 2002.

(e) As used in this section, "qualified property" means any:

(1) qualified pollution control property; or

(2) qualified utility system property.

(f) As used in this section, "qualified utility system property" means any plant, equipment, or facility:

(1) that is used or to be used on a utility system;

(2) that is required to meet state or federal requirements of any government mandated event; and

(3) on which construction began after April 1, 2003.

(g) As used in this section, "state or federal requirements" includes any requirement of:

(1) any state or federal law, rule, regulation, or order; or

(2) any adjudication, settlement, or consent decree in any federal or state court or administrative proceeding that interprets or applies a state or federal law, rule, regulation, or order;

that is in effect, applicable to a utility, and not stayed pending



judicial appeal.

(h) As used in this section, "utility" refers to ~~any an~~ energy generating utility ~~allowed by law to earn a return on its investment. (as defined in IC 8-1-2.5-2).~~

(i) As used in this section, "utility system" means a system used by a utility in whole or in part for:

(1) the production;

(2) the transmission;

(3) the distribution; or

(4) any combination of the production, transmission, or distribution;

of heat, light, or power to provide retail energy service (as defined in IC 8-1-2.5-3), regardless whether the service is provided under IC 8-1-2.5 or under another chapter of this article.

~~(e)~~ (j) Upon the request of a utility that begins construction ~~after March 31, 2002~~, of qualified ~~pollution control~~ property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified ~~pollution control~~ property under construction if construction was begun:

(1) in the case of qualified pollution control property, after March 31, 2002; or

(2) in the case of qualified utility system property, after April 1, 2003.

~~(f)~~ (k) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 2. IC 8-1-2-6.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.9. (a) As used in this section, "government mandated costs" means capital, operating, maintenance, depreciation, or tax costs incurred by an energy utility after April 1, 2003, as a direct result of a government mandated event. The term does not include a civil penalty imposed under section 109.1 of this chapter.

(b) As used in this section, "energy utility" has the meaning set forth in IC 8-1-2.5-2.

(c) As used in this section, "governmental action" means a federal, state, or local rule, regulation, order, or statute.

(d) As used in this section, "government mandated event" means compliance by a utility with a governmental action that:

(1) has a direct material impact on the utility's operating expenses or capital costs; and



(2) is, in effect, applicable to a utility, and is not stayed pending judicial appeal.

(e) As used in this section, "material impact" means a cumulative increase in an energy utility's intrastate regulated total operating expenses or capital costs in an amount equal to or greater than four percent (4%) of the energy utility's authorized net operating income.

(f) As used in this section, "retail energy service" has the meaning set forth in IC 8-1-2.5-3, regardless of whether the service is provided under IC 8-1-2.5 or another provision of this article.

(g) As used in this section, "retail rate adjustment mechanism" means a:

- (1) tracking provision;
- (2) surcharge provision; or
- (3) similar mechanism or provision;

approved by the commission to periodically adjust an energy utility's rates and charges for retail energy service to allow for the recovery of certain costs.

(h) Upon the petition of an energy utility, and after notice and hearing, the commission shall allow the energy utility to recover government mandated costs with deferral or offset deemed appropriate by the commission through a retail rate adjustment mechanism if the commission finds that the energy utility has demonstrated that the government mandated costs are a direct result of a government mandated event and are reasonable.

(i) Recovery of government mandated costs under this section does not preclude inclusion of the costs in an energy utility's basic rates and charges in subsequent rate proceedings. Any government mandated costs subsequently recovered in the energy utility's basic rates and charges may not also be recovered through the retail rate adjustment mechanism under this section.

(j) A retail rate adjustment mechanism proposed by an energy utility under this section may be based on actual or forecasted data. If forecasted data is used, the retail rate adjustment mechanism must contain a reconciliation mechanism to correct any variance between the energy utility's forecasted costs and the energy utility's actual costs in providing retail energy service. An energy utility may not petition the commission for a change in the retail rate adjustment mechanism more than once during any twelve (12) month period.

(k) A retail rate adjustment resulting from a retail rate adjustment mechanism approved by the commission under this

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1 **section:**

2 **(1) is in addition to any other rate adjustment a utility may be**  
 3 **entitled to under this title; and**

4 **(2) is not considered a general increase in basic rates and**  
 5 **charges under section 42(a) of this chapter or IC 8-1-13-30(a).**

6 **(l) The commission shall make any adjustments to an energy**  
 7 **utility's expense tests and return tests during the twelve (12) month**  
 8 **test period considered by the commission in an application under**  
 9 **section 42(d) or 42(g) of this chapter or IC 8-1-13-30(d), whichever**  
 10 **applies, that are necessary to permit the energy utility to retain the**  
 11 **revenues resulting from a retail rate adjustment mechanism**  
 12 **approved by the commission under this section.**

13 SECTION 3. IC 8-1-2-61 IS AMENDED TO READ AS FOLLOWS  
 14 [EFFECTIVE UPON PASSAGE]: Sec. 61. (a) Any public utility may  
 15 make complaint as to any matter affecting its own rates or service. The  
 16 petition or complaint must include a statement as to whether the utility,  
 17 if a not-for-profit water utility or municipal utility, has any outstanding  
 18 indebtedness to the federal government. The public utility shall publish  
 19 a notice of the filing of such petition or complaint in a newspaper of  
 20 general circulation published in any county in which the public utility  
 21 renders service. An order affecting rates or service may be entered by  
 22 the commission without a formal public hearing, if:

23 (1) the utility is a not-for-profit water utility or a municipal utility;  
 24 and

25 (2) the utility has obtained written consent to obtain an order  
 26 affecting its rates from the commission without a formal hearing  
 27 from any agency of the federal government with which the utility  
 28 has outstanding evidence of indebtedness to the federal  
 29 government.

30 The commission may, however, on its own motion require a formal  
 31 public hearing, and shall, upon a motion filed by the utility consumer  
 32 counselor, by any public or municipal corporation, or by ten (10)  
 33 individuals, firms, corporations, limited liability companies, or  
 34 associations, or ten (10) complainants of all or any of these classes,  
 35 hold a formal public hearing with respect to any such petition or  
 36 complaint.

37 (b) In any general rate proceeding under subsection (a) which  
 38 requires a public hearing and in which an increase in revenues is  
 39 sought which exceeds the sum of two million five hundred thousand  
 40 dollars (\$2,500,000), the commission shall conduct at least one (1)  
 41 public hearing in the largest municipality located within such utility's  
 42 service area.



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(c) As used in this subsection, "public utility" includes a department of public utilities created under IC 8-1-11.1. If the commission fails to issue an order making a determination on a request made by a public utility after April 1, 2003, for an increase in the public utility's basic rates and charges for electric or gas service within nine (9) months after the filing of the public utility's case in chief, the public utility may implement the public utility's proposed rate changes beginning on the first day of the first billing month following the expiration of the nine (9) month period allowed the commission under this subsection. A public utility must file notice with the commission of the public utility's implementation of its proposed rate changes under this subsection. The commission may suspend the running of the nine (9) month period if the commission finds that:

- (1) the public utility did not file its case in chief in sufficient detail to allow the commission to begin or complete a review of the request;
- (2) the public utility materially altered the public utility's case in chief after its filing;
- (3) a discovery order compelling production by the public utility has not been satisfied within the time provided in the order; or
- (4) the commission temporarily lacks jurisdiction over the proceeding due to the filing of an interlocutory judicial appeal of a commission ruling or order.

The suspension ends and the nine (9) month period continues to run as soon as the commission determines that the public utility has cured the cause for suspension.

(d) If the commission issues an order making a determination on the public utility's request but does not make the determination within the period allowed under subsection (c), the public utility may continue, after the order is issued, to collect the rates implemented by the public utility under subsection (c) pending a petition for rehearing or an appeal of the commission's order under IC 8-1-3. If the commission does not make a timely determination under subsection (c), notwithstanding any other provision of this article, upon the final determination on the public utility's request, including the determination on any petition for rehearing or appeal under IC 8-1-3, the public utility shall refund any difference between:

- (1) the revenues generated by the rates implemented by the public utility under subsection (c); and



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1 (2) the revenues that would have been generated by the higher  
2 of:

3 (A) the rates authorized in the final determination on the  
4 public utility's request; or

5 (B) the rates of the public utility that were in effect  
6 immediately before the rates implemented by the public  
7 utility under subsection (c);

8 for the period beginning on the effective date of the rates  
9 implemented by the public utility under subsection (c) and ending  
10 on the effective date of the rates authorized in the final  
11 determination on the public utility's request. The public utility  
12 shall issue any refunds required under this subsection not later  
13 than sixty (60) days after the effective date of the rates authorized  
14 in the final determination on the proceedings. The refunds must  
15 include interest accrued at the interest rate set forth in  
16 IC 24-4.6-1-102 from the date on which the public utility begins  
17 collecting the rates implemented by the public utility under  
18 subsection (c).

19 (e) If the commission makes a timely determination under  
20 subsection (c) on a public utility's request, IC 8-1-3-6 governs the  
21 rates that the public utility may collect pending a petition for  
22 rehearing or an appeal of the commission's order.

23 (f) As used in this subsection, "public utility" includes a  
24 department of public utilities created under IC 8-1-11.1. If the  
25 commission fails to issue an order making a determination in an  
26 investigation initiated after April 1, 2003, into the reasonableness  
27 of a public utility's basic rates and charges for electric or gas  
28 service within nine (9) months after the initiation of the  
29 investigation, the commission may order the public utility to  
30 implement the rates determined by the commission based on the  
31 commission's review under IC 8-1-2-42.5 and the evidence in the  
32 record at that time. If so ordered, the public utility shall begin  
33 implementing the rates on the first day of the first billing month  
34 following the expiration of the nine (9) month period allowed the  
35 commission under this subsection. A public utility must file notice  
36 with the commission of the public utility's implementation of the  
37 ordered rate changes under this subsection. The commission may  
38 suspend the running of the nine (9) month period if the commission  
39 finds that:

40 (1) a party other than the public utility did not file the party's  
41 case in chief in sufficient detail to allow the commission to  
42 begin or complete a review of the request;



(2) a party other than the public utility materially altered the party's case in chief after its filing;

(3) a discovery order compelling production by a party other than the public utility has not been satisfied within the time provided in the order; or

(4) the commission temporarily lacks jurisdiction over the proceeding due to the filing of an interlocutory judicial appeal of a commission ruling or order.

The suspension ends and the nine (9) month period continues to run as soon as the commission determines that the party other than the public utility has cured the cause for suspension.

(g) If the commission issues an order making a determination in an investigation into the reasonableness of a public utility's basic rates and charges for electric or gas service but does not make the determination within the period allowed under subsection (f), the public utility must continue, after the order is issued, to collect the rates implemented by the public utility under subsection (f) pending a petition for rehearing or an appeal of the commission's order under IC 8-1-3. If the commission does not make a timely determination under subsection (f), notwithstanding any other provision of this article, upon the final determination in the investigation, including the determination on any petition for rehearing or appeal under IC 8-1-3, the public utility shall refund or collect any difference between:

(1) the revenues generated by the rates implemented by the public utility under subsection (f); and

(2) the revenues that would have been generated by the lower of:

(A) the rates authorized in the final determination in the investigation; or

(B) the rates of the public utility that were in effect immediately before the rates implemented by the public utility under subsection (f);

for the period beginning on the effective date of the rates implemented by the public utility under subsection (f) and ending on the effective date of the rates authorized in the final determination in the investigation. The public utility shall issue any refunds and initiate any collections required under this subsection not later than sixty (60) days after the effective date of the rates authorized in the final determination on the proceedings. The refunds or collections must include interest accrued from the date on which the public utility begins collecting the rates implemented

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by the public utility under subsection (f) at the interest rate set forth in IC 24-4.6-1-102.

(h) If the commission makes a timely determination under subsection (f) in an investigation into the reasonableness of a public utility's basic rates and charges for electric or gas service, IC 8-1-3-6 governs the rates that the public utility may collect pending a petition for rehearing or an appeal of the commission's order.

SECTION 4. IC 8-1-2-84.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 84.1. (a) Notwithstanding sections 83 and 84 of this chapter, this section applies to a transaction involving:**

**(1) a merger, consolidation, reorganization, or union involving a utility company;**

**(2) a tender offer or contract for the purchase, acquisition, assignment, or transfer of stock of a utility company; or**

**(3) a transaction described in subdivision (1) or (2) that:**

**(A) is combined with one (1) or more transactions described in subdivision (1) or (2);**

**(B) is conducted within three (3) years of a transaction described in subdivision (1) or (2); and**

**(C) causes at least fifty percent (50%) of the shares of a utility company's stock that are:**

**(i) outstanding at the time of the transaction; and**

**(ii) entitled to vote generally in the election of the utility company's board of directors;**

**to be beneficially held, directly or indirectly, immediately after the transaction by persons other than the persons that beneficially held, directly or indirectly, the shares of the utility company's stock immediately before the transaction.**

**(b) This section does not apply to a transaction involving an exempt wholesale generator or a direct or an indirect affiliate of an exempt wholesale generator if either the generator or the affiliate:**

**(1) is under the jurisdiction of the federal energy regulatory commission; and**

**(2) either:**

**(A) is not controlled by; or**

**(B) is not an affiliate of;**

**a utility that engages in retail sales in Indiana.**

**(c) As used in this section, "utility" means every corporation, company, partnership, limited liability company, individual, or**

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association of individuals, including lessees, trustees, or court-appointed receivers of a utility company, that may own, operate, manage, or control any plant or equipment within Indiana for the:

(1) production, transmission, delivery, or furnishing of heat, light, power to more than forty thousand (40,000) retail gas or electric customers of the utility in Indiana;

(2) production, transmission, delivery, or furnishing of water; or

(3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

(d) As used in this section, "utility company" means a utility or a utility holding company.

(e) As used in this section, "utility holding company" means a corporation, company, partnership, or limited liability company that owns a utility.

(f) Except as provided in subsection (g), without the prior approval of the commission, a person may not, except in an intracorporate transaction, consummate a transaction described in subsection (a) that causes at least fifty percent (50%) of the then outstanding shares of the utility company's stock entitled to vote generally in the election of the utility company's directors to be beneficially held, directly or indirectly, immediately after the transaction by persons other than the persons that beneficially held, directly or indirectly, the shares of the utility company's stock immediately before the transaction.

(g) If the transaction to be consummated under subsection (f) is a transaction described in subsection (a)(3), approval by the commission is required only for the particular transaction that causes at least fifty percent (50%) of the then outstanding shares of the utility company's stock entitled to be voted generally in the election of the utility company's directors to be beneficially held, directly or indirectly, immediately after the transaction by persons other than the persons that beneficially held, directly or indirectly, the shares of the utility company's stock immediately before the particular transaction.

(h) A utility seeking approval of a transaction subject to this section shall file an application with the commission. After notice and hearing, the commission shall approve a transaction subject to this section if the commission:

(1) considers the effect of the transaction on the provision and



cost of service to customers; and

(2) finds that the transaction will result in a new entity with the technical, financial, and managerial capacity to provide adequate and reliable retail utility service.

(i) A utility company shall file an application with the commission seeking approval of a transaction subject to this section. In determining whether to approve a transaction subject to this section, the commission shall consider the following:

(1) The financial, technical, and managerial capacity of the new entity.

(2) The effect of the merger on the provision and cost of service to customers of the utility.

(j) The commission shall, after notice and public hearing, enter an order either approving or disapproving a transaction subject to this section not later than one hundred thirty-five (135) days after the date on which a utility files an application with the commission for approval of the proposed transaction. If the commission fails to issue an order within the one hundred thirty-five (135) day period allowed the commission under this subsection, the transaction shall be considered approved by operation of law as of the first day following the one hundred thirty-five (135) day period described in this subsection. If the transaction is approved by the commission or considered approved under this subsection, the commission may not take action in any state or federal administrative or judicial proceeding to oppose the transaction. Notwithstanding any other law, rule, or order, an order entered under this section is not subject to a petition for rehearing to the commission, and an appeal from the order must be filed in the Indiana supreme court not more than twenty (20) days after the date of the order.

(k) If commission approval of a transaction involving a:

(1) merger, consolidation, reorganization, or union involving a utility company; or

(2) tender offer or contract for the purchase, acquisition, assignment, or transfer of stock of a utility company;

is not required under this section, commission approval of the transaction is not required under any other provision of this title.

(l) This chapter does not:

(1) prevent the holding of a utility company's stock that is lawfully acquired before April 1, 2003; or

(2) prohibit a merger, consolidation, reorganization, or union involving a utility company if the transaction was lawfully initiated before April 1, 2003.

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SECTION 5. IC 8-1-2-109 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 109. (a) This section does not apply to:

(1) a public utility that owns, operates, manages, or controls any plant or equipment within Indiana for the production, transmission, delivery, or furnishing of heat, light, water, or power;

(2) a public utility that owns, operates, manages, or controls any plant or equipment within Indiana for the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste;

(3) a corporation organized or operating under IC 8-1-13; or

(4) a department of public utilities created under IC 8-1-11.1.

(b) A public utility that violates this chapter or fails to perform any duty enjoined upon it, for which a penalty is not otherwise provided, commits a Class B infraction.

SECTION 6. IC 8-1-2-109.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 109.1. (a) This section does not apply when a public utility's violation or failure to comply under subsection (d) is caused by circumstances beyond the control of the public utility, including any of the following causes:

(1) Customer provided equipment.

(2) A negligent act or omission of a customer.

(3) An emergency situation.

(4) An unavoidable casualty.

(5) An act of God.

(b) As used in this section, "public utility" means any corporation, company, partnership, limited liability company, individual, or association of individuals, including lessees, trustees, or court-appointed receivers of a public utility, that owns, operates, manages, or controls any plant or equipment in Indiana for the production, transmission, delivery, or furnishing of heat, light, water, or power or the collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste. The term includes a department of public utilities created under IC 8-1-11.1. The term does not include:

(1) a municipality or political subdivision; or

(2) a corporation organized or operating under IC 8-1-13.

(c) A public utility and every officer of a public utility shall



1 comply with every order or rule of the commission made under the  
2 authority of this chapter.

3 (d) Except as otherwise provided in this chapter, if the  
4 commission finds, after notice and hearing, that a public utility has  
5 violated this chapter or failed after due notice to comply with:

- 6 (1) a standard of service established by commission rule; or  
7 (2) a rate or service requirement of a final and unappealable  
8 order of the commission;

9 the commission may order the public utility to pay a civil penalty  
10 of not more than five thousand dollars (\$5,000) for each violation  
11 or failure to comply.

12 (e) Notwithstanding subsection (d), if the commission finds after  
13 notice and hearing that the public utility's violation or failure to  
14 comply demonstrates, by a continuing pattern of conduct, a  
15 disregard by the public utility of its obligation to remedy the  
16 violation or failure to comply found under subsection (d), the  
17 commission may impose an additional civil penalty of not more  
18 than ten thousand dollars (\$10,000) for each violation or failure to  
19 comply.

20 (f) The commission shall determine whether each day during  
21 which a public utility violates this chapter or fails after due notice  
22 to comply with:

- 23 (1) a standard of service established by commission rule; or  
24 (2) a rate or service requirement of a final and unappealable  
25 order of the commission;

26 constitutes a separate offense for purposes of subsection (d) or  
27 subsection (e).

28 (g) The commission shall consider the following when  
29 determining the appropriateness of the imposition or amount of a  
30 civil penalty:

- 31 (1) The size of the public utility.  
32 (2) The gravity of the violation or failure to comply.  
33 (3) The good faith of the public utility in attempting to remedy  
34 the violation or failure to comply or attempting to achieve  
35 compliance after receiving notification of the violation or  
36 failure.  
37 (4) The effect of the civil penalty on the public utility's  
38 financial ability to provide adequate and reliable service.  
39 (5) If the public utility is a nonprofit company:  
40 (A) the effect of the penalty on the company's members  
41 and the capitalization of the company; and  
42 (B) whether the act or omission causing the violation or



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1 failure to comply had been approved or requested by the  
2 company's members.

3 In the order imposing the civil penalty, the commission shall make  
4 specific findings with respect to the factors described in  
5 subdivisions (1) through (5).

6 (h) A public utility may not be subject to both a civil penalty  
7 under this section and a penalty agreed to in a commission  
8 approved settlement agreement for the same violation or failure to  
9 comply. If the commission has approved a settlement agreement  
10 that includes penalties or remedies for noncompliance with specific  
11 provisions of the settlement agreement, the penalties provided in  
12 this section do not apply to those instances of noncompliance  
13 during the life of the settlement agreement.

14 (i) Notwithstanding section 112 of this chapter, a public utility  
15 may not be subject to civil penalties under this section that exceed  
16 in the aggregate the lesser of:

17 (1) three and five-tenths percent (3.5%) of the net operating  
18 income authorized in the public utility's last order from the  
19 commission approving basic rates and charges of the public  
20 utility; or

21 (2) six million dollars (\$6,000,000);  
22 for any twelve (12) month period.

23 (j) Notwithstanding section 112 of this chapter, a public utility  
24 whose net operating income as authorized in the public utility's last  
25 order from the commission approving basic rates and charges of  
26 the public utility is equal to or less than zero dollars (\$0) may not  
27 be subject to civil penalties under this section that exceed  
28 five-tenths of one percent (0.5%) of the public utility's gross  
29 intrastate operating revenue from retail utility sales for any twelve  
30 (12) month period.

31 (k) Civil penalties recovered under this section shall be paid into  
32 the state general fund.

33 (l) Upon the motion of a public utility, the commission shall stay  
34 the effect or enforceability of an order issued under this section  
35 pending an appeal if the public utility posts a bond that complies  
36 with Rule 18 of the Indiana Rules of Appellate Procedure.

37 (m) Notwithstanding any other provision in this article, a public  
38 utility may not recover in the utility's rates or charges a civil  
39 penalty assessed under this section.

40 SECTION 7. IC 8-1-2-115 IS AMENDED TO READ AS  
41 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 115. The commission  
42 shall inquire into any neglect or violation of the statutes of this state or

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the ordinances of any city or town by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be ~~its~~ **the commission's** duty to enforce the provisions of this chapter, as well as all other laws, relating to public utilities. Any forfeiture or penalty provided in this chapter shall be recovered, and suit therein shall be brought in the name of the state of Indiana ~~in the circuit or superior court where the public utility has its principal place of business:~~ **by the attorney general.** Complaint for the collection of any such forfeiture may be made by the commission or any member thereof, and, when so made, the action so commenced shall be prosecuted by the **attorney general.** ~~counsel.~~

SECTION 8. IC 8-1-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. All rules, practices, installations, and services prescribed, approved, or required by the commission shall be in force and shall be prima facie reasonable unless finally found otherwise by the court of appeals or by the supreme court if the cause is transferred to and decided by that court. ~~However,~~ **Except as otherwise allowed or required under IC 8-1-2-61(c) or IC 8-1-2-61(f),** pending the appeal as in this chapter provided, any municipally owned utility, public utility, rural electric membership corporation, or rural telephone cooperative association whose rate or rates are affected by the decision, ruling, or order appealed from shall have the right to collect the rate or rates as fixed by said decision, ruling, or order, or the former rate, whichever is higher in amount, and such municipally owned utility, public utility, corporation, or association shall refund the difference to each consumer or contract customer if such difference be not sustained upon appeal. However, pending the appeal as in this chapter provided, the court of appeals, upon good cause shown by verified petition, may authorize and permit, but not require, any common or contract carrier whose rate or rates are affected by the decision, ruling, or order appealed from, to collect the rate or rates published and in effect or the rate or rates sought to be put into effect, immediately prior to the commencement of the proceeding before the commission, subject to such provisions for bond or escrow as the court shall provide to protect the interest of all parties of record before the court.

SECTION 9. IC 8-1-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Upon determination of the appeal, the court shall have jurisdiction to affirm or set aside such decision, ruling, or order of the commission, in whole or in part, or remand the proceeding to the commission with instructions. No



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1 evidence beyond that contained in the record of the proceedings before  
 2 the commission shall be considered or received by the court, except  
 3 that in cases where issues of confiscation or of constitutional right are  
 4 involved, the court, on its own motion or verified petition of a party,  
 5 may order such additional evidence as it deems necessary for the  
 6 determination of such issues to be taken before the commission and to  
 7 be received at the hearing before the commission in such manner and  
 8 upon such terms and conditions as the court shall order.

9 (b) If a new hearing is ordered under subsection (a), the commission  
 10 is not required to receive any evidence as to facts which were in  
 11 existence at the time of the prior commission hearing or hearings,  
 12 except upon a showing, either to the court in the first instance, or the  
 13 commission, upon the hearing, that:

14 (1) the evidence was not available for presentation to the  
 15 commission prior to the entry of its final decision, ruling, or order,  
 16 or prior to the determination of the commission upon the petition  
 17 for rehearing, if a petition for rehearing was filed; and

18 (2) due diligence was exercised by the party offering the evidence  
 19 to procure and present the evidence to the commission prior to the  
 20 entry of its final decision, ruling, or order, or its determination  
 21 upon the petition for rehearing, if any was filed.

22 (c) Whenever the court shall order additional evidence to be taken  
 23 the commission shall promptly hear and report the evidence to the  
 24 court so that the proof may be brought as nearly as reasonably possible  
 25 down to the date of its report to the court. The commission may, after  
 26 hearing such evidence, modify its findings as to facts and its original  
 27 decision, ruling, or order, and it shall file with the court the amended  
 28 decision or orders and any modified or new findings.

29 (d) If the commission modifies or amends its original decision or  
 30 orders, the appealing party or any other party aggrieved by the modified  
 31 or amended decision or order may file with the court, within the time  
 32 allowed by the court, a specification of any errors of law claimed to  
 33 have been made by the commission in the modified decision or orders.  
 34 A specification of errors shall be considered by the court in addition to  
 35 the errors of law asserted in the assignment or assignments of error.

36 (e) The supreme court and the court of appeals, as the case may be,  
 37 have jurisdiction, upon application of the commission or any party, to  
 38 order or enjoin temporarily or permanently the enforcement of any  
 39 determination, ruling, or order of the commission made in the cause.

40 (f) The supreme court and the court of appeals, as the case may be,  
 41 also have jurisdiction upon application of a public utility to issue  
 42 temporary injunctions protecting the utility in the collection of rates

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determined by the court to be nonconfiscatory during the pendency of the proceeding and until nonconfiscatory rates are fixed by the commission if existing rates are finally determined to be confiscatory, with appropriate provisions as to bonds and refunds. **A public utility that provides electric or gas service is not required to petition the court under this subsection in order to collect, during the pendency of the proceeding, the rates allowed under IC 8-1-2-61(d).**

SECTION 10. IC 8-1-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. Nothing in this chapter contained shall be construed to affect the duty or power of:

(1) the commission to commence ~~and prosecute~~ enforcement proceedings in its own name; or

(2) **the attorney general to prosecute enforcement proceedings** in the name of the state of Indiana in the circuit or superior courts of this state;

pursuant to the provisions of **IC 8-1-2-115, IC 8-1-13-41.2, or** other statutes, except insofar as such proceedings may interfere with the jurisdiction of the court of appeals or supreme court in a cause then pending on appeal.

SECTION 11. IC 8-1-13-41.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 41.1. (a) The authority granted to the commission under this section is in addition to the commission's authority under section 41 of this chapter.**

**(b) This section does not apply when a corporation's violation or failure to comply under subsection (d) is caused by circumstances beyond the control of the corporation, including the following:**

(1) Customer provided equipment.

(2) A negligent act or omission of a customer.

(3) An emergency situation.

(4) An unavoidable casualty.

(5) An act of God.

**(c) A corporation subject to the commission's jurisdiction under this chapter and every officer of the corporation shall comply with all orders and rules of commission made under the authority of this chapter.**

**(d) Except as otherwise provided in this chapter, if the commission finds after notice and hearing that a corporation has violated this chapter or failed after notice to comply with:**

(1) a standard of service established by commission rule; or

(2) a rate or service requirement of a final and unappealable



1           order of the commission;  
 2           the commission may order the corporation to pay a civil penalty of  
 3           not more than five thousand dollars (\$5,000) for each violation or  
 4           failure to comply.

5           (e) Notwithstanding subsection (d), if the commission finds after  
 6           notice and hearing that the corporation's violation or failure to  
 7           comply demonstrates, by a continuing pattern of conduct, a  
 8           disregard by the corporation of its obligation to remedy the  
 9           violation or failure to comply found under subsection (d), the  
 10          commission may impose an additional civil penalty of not more  
 11          than ten thousand dollars (\$10,000) for each violation or failure to  
 12          comply.

13          (f) The commission shall consider the following when  
 14          determining the appropriateness of the imposition or amount of a  
 15          civil penalty:

- 16           (1) The size of the corporation.
- 17           (2) The gravity of the violation or failure to comply.
- 18           (3) The good faith of the corporation in attempting to remedy  
 19           the violation or failure to comply or achieve compliance after  
 20           receiving notification of the violation or failure.
- 21           (4) The effect of the civil penalty on the corporation's  
 22           members and the capitalization of the corporation.
- 23           (5) Whether the corporation's members had approved or  
 24           requested the act or omission causing the violation or failure  
 25           to comply.

26          In the order imposing the civil penalty, the commission shall make  
 27          specific findings with respect to the factors described in  
 28          subdivisions (1) through (5).

29          (g) A corporation may not be subject to both a civil penalty  
 30          under this section and a penalty agreed to in a settlement  
 31          agreement approved by the commission for the same violation or  
 32          failure to comply. If the commission has approved a settlement  
 33          agreement that includes penalties or remedies for noncompliance  
 34          with specific provisions of the settlement agreement, the penalties  
 35          under this section do not apply to those instances of noncompliance  
 36          during the life of the settlement agreement.

37          (h) The total penalties imposed under this section on a  
 38          corporation in a calendar year may not exceed five-tenths of one  
 39          percent (0.5%) of the corporation's gross intrastate operating  
 40          revenue from retail sales of energy after deducting the  
 41          corporation's cost of fuel and purchased electricity.

42          (i) The commission shall determine whether each day during



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1 which a corporation violates this chapter or fails after due notice  
2 to comply with:

- 3 (1) a standard of service established by commission rule; or  
4 (2) a rate or service requirement of a final and unappealable  
5 order of the commission;

6 constitutes a separate offense for purposes of subsection (d).

7 SECTION 12. IC 8-1-13-41.2 IS ADDED TO THE INDIANA  
8 CODE AS A NEW SECTION TO READ AS FOLLOWS  
9 [EFFECTIVE JULY 1, 2003]: **Sec. 41.2. Any forfeiture or penalty**  
10 **provided in this chapter shall be recovered and any suit related to**  
11 **the forfeiture or penalty shall be brought in the name of the state**  
12 **of Indiana by the attorney general in a court with jurisdiction.**  
13 **Complaint for the collection of any forfeiture or penalty may be**  
14 **made by the commission or any commission member and, when**  
15 **made, the action commenced shall be prosecuted by the attorney**  
16 **general.**

17 SECTION 13. IC 8-1-27-3 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this  
19 chapter, "environmental compliance plan" means a plan developed by  
20 a public utility to comply in whole or in part with the requirements of  
21 ~~the Clean Air Act Amendments of 1990: state or federal~~  
22 **environmental laws.**

23 SECTION 14. IC 8-1-27-5.7 IS ADDED TO THE INDIANA CODE  
24 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE  
25 UPON PASSAGE]: **Sec. 5.7. As used in this chapter, "state or**  
26 **federal environmental laws" means:**

- 27 (1) any state or federal law, rule, regulation, or order; or  
28 (2) any adjudication, settlement, or consent decree in any state  
29 or federal court or administrative proceeding interpreting or  
30 applying a state or federal law, rule, regulation, or order;

31 **relating to the protection, monitoring, preservation, remediation,**  
32 **or restoration of human health, the environment, or natural**  
33 **resources from air pollution, wastewater, solid waste, or thermal**  
34 **pollution.**

35 SECTION 15. IC 8-1-27-6 IS AMENDED TO READ AS  
36 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) A public  
37 utility that has at least one (1) generating unit affected by ~~Section 404~~  
38 ~~(Phase I) or Section 405 (Phase II) of the Clean Air Act Amendments~~  
39 ~~of 1990~~ **state or federal environmental laws** may voluntarily submit  
40 **to the commission for the commission's review and approval under**  
41 **this chapter** a verified environmental compliance plan that sets forth  
42 the manner in which the public utility intends to comply with the

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requirements of the ~~Clean Air Act Amendments of 1990~~ to the  
commission for the commission's review and approval under this  
chapter. **state or federal environmental laws addressed by the plan.**

(b) An environmental compliance plan described in subsection (a)  
must include any information that the commission may reasonably  
require. The commission shall require a plan described in subsection  
(a) to include at least the following information:

(1) A description of the requirements of the ~~Clean Air Act  
Amendments of 1990~~ **state or federal environmental laws  
addressed by the plan** and applicable to each facility or  
generating unit owned or operated by the public utility.

(2) A description of the measures the public utility proposes to  
implement to comply with the requirements.

(3) The schedule under which the public utility proposes to  
implement the measures.

(4) An estimate of the cost of implementing each of the measures  
proposed by the public utility.

(5) An analysis of the comparative estimated costs of meeting the  
applicable requirements of the ~~Clean Air Act Amendments of  
1990~~ **state or federal environmental laws addressed by the  
plan** through the measures proposed by the public utility and  
other alternative compliance measures considered by the public  
utility.

(6) For all compliance plans submitted to the commission after  
July 1, 1993, if an environmental compliance plan proposes a  
change of fuel type from the fuel type consumed in the public  
utility's generating units and that change of fuel type would result  
in the displacement or diminished use of Indiana coal from the  
quantity of Indiana coal consumed by the public utility during the  
calendar year 1990, or an average of the quantity of Indiana coal  
consumed by the utility in calendar years 1990, 1991, and 1992,  
whichever is submitted by the utility in the plan, the public utility  
shall submit the following as part of the environmental  
compliance plan:

(A) An analysis of the following:

(i) The economic and employment effects of the proposed  
change of fuel type on the regions of Indiana in which the  
mining of coal provides employment, and on the service  
territory of the public utility.

(ii) The effects of the proposed modification on the  
preservation of the mining of Indiana coal as a viable source  
of fuel.



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The analyses required under this clause must include a comparison of the effects likely to result from the alternative compliance measures identified under subdivision (5).

(B) Information describing the availability, the reliability, the current costs, and the projected future costs of the fuel type proposed for use in connection with the environmental compliance plan.

SECTION 16. IC 8-1-27-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. The commission shall issue an order approving an environmental compliance plan if the commission:

(1) finds that the environmental compliance plan:

(A) is reasonably designed to meet or exceed the applicable requirements of the ~~Clean Air Act Amendments of 1990~~; **state or federal environmental laws addressed by the plan**;

(B) constitutes a reasonable and least cost strategy over the life of the investment consistent with providing reliable, efficient, and economical electrical service; **and**

(C) is in the public interest; and

~~(D) either:~~

~~(i) provides for continued or increased use of Indiana coal in the coal-consuming electric generating units owned or operated by the public utility and affected by the Clean Air Act Amendments of 1990; or~~

~~(ii) if the plan does not provide for continued or increased use of Indiana coal, such nonprovision is justified by economic~~

~~considerations including the effects in the regions of Indiana in which the mining of coal provides employment and in the service territory of the public utility; and~~

(2) approves the cost and schedule estimate for developing and implementing the environmental compliance plan.

SECTION 17. IC 8-1-27-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. If a public utility:

(1) chooses to; or

(2) because of action by a federal or state government environmental agency, is required to;

modify a part of an environmental compliance plan that has previously been approved by the commission to comply with the requirements of the ~~Clean Air Act~~, **state or federal environmental laws addressed by the plan**, the public utility shall submit a modified environmental



1 compliance plan to the commission for the commission's review. The  
2 conflict provisions of section 10 of this chapter apply to a modified  
3 environmental compliance plan submitted under this section.

4 SECTION 18. IC 8-1-27-14 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. If the  
6 commission finds that an environmental compliance plan or a modified  
7 environmental compliance plan approved by the commission under this  
8 chapter exceeds the applicable requirements of the ~~Clean Air Act~~  
9 ~~Amendments of 1990~~ **state or federal environmental laws addressed**  
10 **by the plan** by means of early or over compliance, the commission  
11 shall, in the order approving the plan, determine the manner and timing  
12 of the applicable ratemaking and regulatory treatment of any emission  
13 credits or other additional benefits expected to result from the early or  
14 over compliance.

15 SECTION 19. THE FOLLOWING ARE REPEALED [EFFECTIVE  
16 UPON PASSAGE]: IC 8-1-27-1; IC 8-1-27-2.

17 SECTION 20. **An emergency is declared for this act.**

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1529, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete page 2.

Page 3, delete lines 1 through 24, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2-6.8, AS ADDED BY P.L.159-2002, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.8. (a) This section applies to a utility that begins construction of qualified ~~pollution control~~ property after March 31, 2002.

(b) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and directly or indirectly reduces airborne emissions of sulfur, mercury, or nitrogen oxides or other regulated air emissions associated with the combustion or use of coal; and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(c) As used in this section, "**government mandated event**" has the meaning set forth in section 6.9 of this chapter.

(d) As used in this section, "qualified pollution control property" means: ~~an~~

(1) any:

(A) air, **wastewater, solid waste, or thermal pollution treatment, storage, or disposal system** or pollution control device ~~on~~ **necessary to operate** a coal burning energy generating facility; or ~~any~~

(B) equipment that constitutes clean coal technology; that has been approved for use by the commission and that meets applicable state or federal requirements; ~~(d)~~ or

(2) any air, **wastewater, solid waste, or thermal pollution**

HB 1529—LS 7256/DI 103+



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treatment, storage, or disposal system, pollution control device, or monitoring device that:

(A) is used for any plant, equipment, or facility used or to be used for the production, transmission, delivery, or furnishing of heat, light, or power;

(B) is approved for use by the commission; and

(C) meets applicable state or federal requirements;

on which construction began after March 31, 2002.

(e) As used in this section, "qualified property" means any:

(1) qualified pollution control property; or

(2) qualified utility system property.

(f) As used in this section, "qualified utility system property" means any plant, equipment, or facility:

(1) that is used or to be used on a utility system;

(2) that is required to meet state or federal requirements of any government mandated event; and

(3) on which construction began after April 1, 2003.

(g) As used in this section, "state or federal requirements" includes any requirement of:

(1) any state or federal law, rule, regulation, or order; or

(2) any adjudication, settlement, or consent decree in any federal or state court or administrative proceeding that interprets or applies a state or federal law, rule, regulation, or order;

that is in effect, applicable to a utility, and not stayed pending judicial appeal.

(h) As used in this section, "utility" refers to ~~any~~ an energy generating utility allowed by law to earn a return on its investment. (as defined in IC 8-1-2.5-2).

(i) As used in this section, "utility system" means a system used by a utility in whole or in part for:

(1) the production;

(2) the transmission;

(3) the distribution; or

(4) any combination of the production, transmission, or distribution;

of heat, light, or power to provide retail energy service (as defined in IC 8-1-2.5-3), regardless whether the service is provided under IC 8-1-2.5 or under another chapter of this article.

~~(e)~~ (j) Upon the request of a utility that begins construction ~~after March 31, 2002~~, of qualified ~~pollution control~~ property that is to be used and useful for the public convenience, the commission shall for

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ratemaking purposes add to the value of that utility's property the value of the qualified ~~pollution control~~ property under construction **if construction was begun:**

**(1) in the case of qualified pollution control property, after March 31, 2002; or**

**(2) in the case of qualified utility system property, after April 1, 2003.**

(f) **(k)** The commission shall adopt rules under IC 4-22-2 to implement this section."

Page 3, line 30, delete "January" and insert "**April**".

Page 3, line 31, after "event." insert "**The term does not include a civil penalty imposed under section 109.1 of this chapter.**".

Page 3, line 38, delete "and".

Page 3, line 38, delete "effect" and insert "**impact**".

Page 3, line 42, after "section," insert "**\"material impact\" means a cumulative increase in an energy utility's intrastate regulated total operating expenses or capital costs in an amount equal to or greater than four percent (4%) of the energy utility's authorized net operating income.**

**(f) As used in this section,"**

Page 4, line 3, delete "(f)" and insert "**(g)**".

Page 4, line 11, delete "(g)" and insert "**(h)**".

Page 4, line 13, delete "without any" and insert "**with**".

Page 4, line 13, after "offset" insert "**deemed appropriate by the commission**".

Page 4, line 17, delete "(h)" and insert "**(i)**".

Page 4, line 23, delete "(i)" and insert "**(j)**".

Page 4, line 32, delete "(j)" and insert "**(k)**".

Page 4, line 39, delete "(k)" and insert "**(l)**".

Page 5, line 37, after "request" insert "**made**".

Page 5, line 37, after "utility" insert "**after April 1, 2003,**".

Page 6, line 7, after "begin" insert "**or complete**".

Page 6, line 18, delete "public utility cures" and insert "**commission determines that the public utility has cured**".

Page 7, line 5, delete "from the date of the final determination".

Page 7, line 6, delete "IC 24-4.6-1-102." and insert "**IC 24-4.6-1-102 from the date on which the public utility begins collecting the rates implemented by the public utility under subsection (c).**".

Page 7, between lines 10 and 11, begin a new paragraph and insert:

**"(f) As used in this subsection, "public utility" includes a department of public utilities created under IC 8-1-11.1. If the**

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commission fails to issue an order making a determination in an investigation initiated after April 1, 2003, into the reasonableness of a public utility's basic rates and charges for electric or gas service within nine (9) months after the initiation of the investigation, the commission may order the public utility to implement the rates determined by the commission based on the commission's review under IC 8-1-2-42.5 and the evidence in the record at that time. If so ordered, the public utility shall begin implementing the rates on the first day of the first billing month following the expiration of the nine (9) month period allowed the commission under this subsection. A public utility must file notice with the commission of the public utility's implementation of the ordered rate changes under this subsection. The commission may suspend the running of the nine (9) month period if the commission finds that:

- (1) a party other than the public utility did not file the party's case in chief in sufficient detail to allow the commission to begin or complete a review of the request;
- (2) a party other than the public utility materially altered the party's case in chief after its filing;
- (3) a discovery order compelling production by a party other than the public utility has not been satisfied within the time provided in the order; or
- (4) the commission temporarily lacks jurisdiction over the proceeding due to the filing of an interlocutory judicial appeal of a commission ruling or order.

The suspension ends and the nine (9) month period continues to run as soon as the commission determines that the party other than the public utility has cured the cause for suspension.

(g) If the commission issues an order making a determination in an investigation into the reasonableness of a public utility's basic rates and charges for electric or gas service but does not make the determination within the period allowed under subsection (f), the public utility must continue, after the order is issued, to collect the rates implemented by the public utility under subsection (f) pending a petition for rehearing or an appeal of the commission's order under IC 8-1-3. If the commission does not make a timely determination under subsection (f), notwithstanding any other provision of this article, upon the final determination in the investigation, including the determination on any petition for rehearing or appeal under IC 8-1-3, the public utility shall refund or collect any difference between:



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- (1) the revenues generated by the rates implemented by the public utility under subsection (f); and
- (2) the revenues that would have been generated by the lower of:

- (A) the rates authorized in the final determination in the investigation; or
- (B) the rates of the public utility that were in effect immediately before the rates implemented by the public utility under subsection (f);

for the period beginning on the effective date of the rates implemented by the public utility under subsection (f) and ending on the effective date of the rates authorized in the final determination in the investigation. The public utility shall issue any refunds and initiate any collections required under this subsection not later than sixty (60) days after the effective date of the rates authorized in the final determination on the proceedings. The refunds or collections must include interest accrued from the date on which the public utility begins collecting the rates implemented by the public utility under subsection (f) at the interest rate set forth in IC 24-4.6-1-102.

(h) If the commission makes a timely determination under subsection (f) in an investigation into the reasonableness of a public utility's basic rates and charges for electric or gas service, IC 8-1-3-6 governs the rates that the public utility may collect pending a petition for rehearing or an appeal of the commission's order."

Page 7, delete lines 19 through 21, begin a new line block indented and insert:

- "(3) a transaction described in subdivision (1) or (2) that:
- (A) is combined with one (1) or more transactions described in subdivision (1) or (2);
  - (B) is conducted within three (3) years of a transaction described in subdivision (1) or (2); and
  - (C) causes at least fifty percent (50%) of the shares of a utility company's stock that are:
    - (i) outstanding at the time of the transaction; and
    - (ii) entitled to vote generally in the election of the utility company's board of directors;
- to be beneficially held, directly or indirectly, immediately after the transaction by persons other than the persons that beneficially held, directly or indirectly, the shares of the utility company's stock immediately before the



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transaction.

(b) This section does not apply to a transaction involving an exempt wholesale generator or a direct or an indirect affiliate of an exempt wholesale generator if either the generator or the affiliate:

(1) is under the jurisdiction of the federal energy regulatory commission; and

(2) either:

(A) is not controlled by; or

(B) is not an affiliate of;

a utility that engages in retail sales in Indiana."

Page 7, line 22, delete "(b)" and insert "(c)".

Page 7, line 23, after "individual," insert "or".

Page 7, line 24, delete "their" and insert "including".

Page 7, line 25, after "receivers" insert "of a utility company,".

Page 7, line 28, delete "water, or power; or" and insert "power to more than forty thousand (40,000) retail gas or electric customers of the utility in Indiana;

(2) production, transmission, delivery, or furnishing of water; or".

Page 7, line 29, delete "(2)" and insert "(3)".

Page 7, line 32, delete "(c)" and insert "(d)".

Page 7, line 34, delete "(d)" and insert "(e)".

Page 7, line 37, delete "(e) Without" and insert "(f) Except as provided in subsection (g), without".

Page 7, line 40, delete "energy" and insert "utility".

Page 7, line 42, delete "energy" and insert "utility".

Page 8, line 3, delete "energy" and insert "utility".

Page 8, line 4, delete "(f)" and insert "(g) If the transaction to be consummated under subsection (f) is a transaction described in subsection (a)(3), approval by the commission is required only for the particular transaction that causes at least fifty percent (50%) of the then outstanding shares of the utility company's stock entitled to be voted generally in the election of the utility company's directors to be beneficially held, directly or indirectly, immediately after the transaction by persons other than the persons that beneficially held, directly or indirectly, the shares of the utility company's stock immediately before the particular transaction.

(h) A utility seeking approval of a transaction subject to this section shall file an application with the commission. After notice and hearing, the commission shall approve a transaction subject to this section if the commission:

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**(1) considers the effect of the transaction on the provision and cost of service to customers; and**

**(2) finds that the transaction will result in a new entity with the technical, financial, and managerial capacity to provide adequate and reliable retail utility service.**

**(i)".**

Page 8, line 12, delete "(g)" and insert "**(j)**".

Page 8, line 12, delete "shall" and insert "**shall, after notice and public hearing,**".

Page 8, line 24, after "transaction." insert "**Notwithstanding any other law, rule, or order, an order entered under this section is not subject to a petition for rehearing to the commission, and an appeal from the order must be filed in the Indiana supreme court not more than twenty (20) days after the date of the order.**".

Page 8, line 25, delete "(h)" and insert "**(k)**".

Page 8, line 32, delete "(i)" and insert "**(l)**".

Page 8, line 34, delete "January 1," and insert "**April 1,**".

Page 8, line 37, delete "January 1," and insert "**April 1,**".

Page 9, line 7, delete "or".

Page 9, line 8, delete "IC 8-1-13." and insert "**IC 8-1-13; or**

**(4) a department of public utilities created under IC 8-1-11.1."**

Page 9, line 26, delete "receivers," and insert "**receivers of a public utility,**".

Page 10, line 14, after "(f)" insert "**The commission shall determine whether each day during which a public utility violates this chapter or fails after due notice to comply with:**

**(1) a standard of service established by commission rule; or**

**(2) a rate or service requirement of a final and unappealable order of the commission;**

**constitutes a separate offense for purposes of subsection (d) or subsection (e).**

**(g)".**

Page 10, line 27, delete "its" and insert "**the**".

Page 10, line 34, delete "(g)" and insert "**(h)**".

Page 11, delete lines 1 through 4, begin a new paragraph and insert:

**"(i) Notwithstanding section 112 of this chapter, a public utility may not be subject to civil penalties under this section that exceed in the aggregate the lesser of:**

**(1) three and five-tenths percent (3.5%) of the net operating income authorized in the public utility's last order from the commission approving basic rates and charges of the public**

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utility; or  
 (2) six million dollars (\$6,000,000);  
 for any twelve (12) month period.

(j) Notwithstanding section 112 of this chapter, a public utility whose net operating income as authorized in the public utility's last order from the commission approving basic rates and charges of the public utility is equal to or less than zero dollars (\$0) may not be subject to civil penalties under this section that exceed five-tenths of one percent (0.5%) of the public utility's gross intrastate operating revenue from retail utility sales for any twelve (12) month period."

Page 11, line 5, delete "(i)" and insert "(k)".

Page 11, line 7, delete "(j)" and insert "(l)".

Page 11, between lines 10 and 11, begin a new paragraph and insert:

"(m) Notwithstanding any other provision in this article, a public utility may not recover in the utility's rates or charges a civil penalty assessed under this section."

Page 11, line 32, after "allowed" insert "or required".

Page 11, line 32, delete "IC 8-1-2-61(c)," and insert "IC 8-1-2-61(c) or IC 8-1-2-61(f)".

Page 13, between lines 31 and 32, begin a new paragraph and insert:

"SECTION 11. IC 8-1-13-41.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 41.1. (a) The authority granted to the commission under this section is in addition to the commission's authority under section 41 of this chapter.

(b) This section does not apply when a corporation's violation or failure to comply under subsection (d) is caused by circumstances beyond the control of the corporation, including the following:

- (1) Customer provided equipment.
- (2) A negligent act or omission of a customer.
- (3) An emergency situation.
- (4) An unavoidable casualty.
- (5) An act of God.

(c) A corporation subject to the commission's jurisdiction under this chapter and every officer of the corporation shall comply with all orders and rules of commission made under the authority of this chapter.

(d) Except as otherwise provided in this chapter, if the commission finds after notice and hearing that a corporation has violated this chapter or failed after notice to comply with:



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- (1) a standard of service established by commission rule; or
- (2) a rate or service requirement of a final and unappealable order of the commission;

the commission may order the corporation to pay a civil penalty of not more than five thousand dollars (\$5,000) for each violation or failure to comply.

(e) Notwithstanding subsection (d), if the commission finds after notice and hearing that the corporation's violation or failure to comply demonstrates, by a continuing pattern of conduct, a disregard by the corporation of its obligation to remedy the violation or failure to comply found under subsection (d), the commission may impose an additional civil penalty of not more than ten thousand dollars (\$10,000) for each violation or failure to comply.

(f) The commission shall consider the following when determining the appropriateness of the imposition or amount of a civil penalty:

- (1) The size of the corporation.
- (2) The gravity of the violation or failure to comply.
- (3) The good faith of the corporation in attempting to remedy the violation or failure to comply or achieve compliance after receiving notification of the violation or failure.
- (4) The effect of the civil penalty on the corporation's members and the capitalization of the corporation.
- (5) Whether the corporation's members had approved or requested the act or omission causing the violation or failure to comply.

In the order imposing the civil penalty, the commission shall make specific findings with respect to the factors described in subdivisions (1) through (5).

(g) A corporation may not be subject to both a civil penalty under this section and a penalty agreed to in a settlement agreement approved by the commission for the same violation or failure to comply. If the commission has approved a settlement agreement that includes penalties or remedies for noncompliance with specific provisions of the settlement agreement, the penalties under this section do not apply to those instances of noncompliance during the life of the settlement agreement.

(h) The total penalties imposed under this section on a corporation in a calendar year may not exceed five tenths of one percent (0.5%) of the corporation's gross intrastate operating revenue from retail sales of energy, after deducting the

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corporation's cost of fuel and purchased electricity.

(i) The commission shall determine whether each day during which a corporation violates this chapter or fails after due notice to comply with:

- (1) a standard of service established by commission rule; or
- (2) a rate or service requirement of a final and unappealable order of the commission;

constitutes a separate offense for purposes of subsection (d)."

Page 13, line 34, delete "The commission shall".

Page 13, delete lines 35 through 42 and insert "Any".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1529 as introduced.)

STEVENSON, Chair

Committee Vote: yeas 12, nays 2.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1529 be amended to read as follows:

Page 4, line 19, after "utility," insert "**and after notice and hearing,**".

Page 18, line 38, delete "five tenths" and insert "**five-tenths**".

Page 18, line 40, delete "energy," and insert "**energy**".

(Reference is to HB 1529 as printed February 11, 2003.)

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